

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility With Enhanced 9-1-1)	
Emergency Calling Systems)	
)	
Amendment of Parts 2 and 25 to Implement the)	IB Docket No. 99-67
Global Mobile Personal Communications by)	
Satellite (GMPCS) Memorandum of)	
Understanding and Arrangements: Petition of the)	
National Telecommunications and Information)	
Administration to Amend Part 25 of the)	
Commission's Rules to Establish Emissions)	
Limits for Mobile and Portable Earth Stations)	
Operating in the 1610-1660.5 MHz Band)	

COMMENTS OF ATX TECHNOLOGIES, INC.

February 19, 2003

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SUMMARY OF COMMENTS

TELEMATICS – AN EMERGING TECHNOLOGY AND NASCENT MARKET.

Telematics provides for the delivery of information to and from vehicles. When a vehicle breaks down, the driver is lost, or when the driver needs assistance, he or she presses a button in their vehicle and an ATX operator answers the call and responds to the driver's request. A telematics package might offer, among its many informational and location-based services, most notably, the ability to pinpoint the vehicle's location and provide assistance in contacting emergency responders. ATX and others in private industry introduced telematics in 1996 without any government mandate and prior to the deployment of any location-based cell phones. Telematics-based emergency assistance was deployed without any cost to public safety answering points ("PSAPs"). Today, telematics provides the only ubiquitous, coast-to-coast access to location-based emergency response services – exactly what the Commission is seeking from the wireless industry, albeit in denser coverage – and delivers it to any PSAP, regardless of whether it is Phase II compliant.

The telematics industry remains in a nascent state; out of approximately 128 million new and used cars in the U.S.,¹ only 2.8 to 3 million subscribe to telematics. The telematics industry is currently in the precarious stage of trying to broaden deployment of its services to more automotive original equipment manufacturers (OEMs) and beyond the luxury and near luxury model lines where telematics has been most successful to date. Deployment costs and the subsequent demonstration that telematics can generate a return on investment for OEMs are the biggest challenges facing the industry. Whether to include emergency-based telematics services at all, one of the costliest of telematics services, is a key consideration OEMs face when

¹ R.L. Polk & Co., 2002 Automotive News Market Data Book.

developing a telematics package for their customers. The threat of regulation to an emerging industry like telematics could inhibit further private investment in this service.

ATX and other telematics service providers (“TSPs”) are currently engaged in a long-standing cooperative effort with government (U.S. Department of Transportation) and the full range of emergency response agencies, including PSAPs. That effort is addressing the policy, operations and technical issues raised by the intersection of the public emergency response communications network and the private telematics industry. The great amount of time and resources already invested in this private/public integration initiative is yielding significant progress. In fact, telematics is now a uniquely valuable adjunct to, but no substitute for, the existing public emergency response network, and the combination is reasonably trouble-free. The threat of regulation could retard this voluntary effort.

The Commission’s own expert (Mr. Dale Hatfield) indicated in his report to the Commission that the PSAPs are in no position to accept more requirements without slowing down the E9-1-1 deployment effort. Mr. Hatfield specifically warned against placing new requirements, such as telematics services, on the PSAP community. The current cooperative, public/private approach should be allowed to continue unfettered by regulation until such time that a proven problem arises requiring a regulatory fix. While telematics is not a primary emergency response service, it has a clear and quantifiable positive impact on public safety. In this era of increased terrorist threats, complementary approaches for summoning emergency response would be prudent.

The Commission has no direct jurisdiction over ATX’s telematics services; and if there is any ancillary jurisdiction here, the criteria for applying E9-1-1 requirements are unsatisfied. Moreover, the Commission has not sought to regulate such information services in the past. In

the telematics value chain, ATX is similar to an Internet Service Provider (“ISP”). As such, ATX does not make hardware or sell or resell the telecommunications required to receive requests or service. Like an ISP, ATX provides access to services and information. ATX’s telematics service does not enable end-users to access the public-switched telephone network (“PSTN”), nor does it compete with traditional commercial mobile radio service (“CMRS”) or wireline local exchange carriers. Nor does this service give end-users the expectation that such a connection is possible. Nor does telematics hardware have the capability to support E9-1-1.

While location-based emergency response and automatic crash notification (“ACN”) represent only a portion of the suite of its telematics services, ATX is committed to improving vehicular access to emergency services and working with a broad range of emergency response communities to deliver a ubiquitous service across the continent. Yet ATX asks the Commission to refrain from imposing its E9-1-1 rules or other regulatory requirements on telematics given: (1) the current and future value of telematics in saving lives and complementing a variety of emergency response communications networks at no public expense, (2) the Commission’s established policy toward fragile, nascent industries, (3) the progress of the private/public TSP-DOT-emergency communities relationship, (4) the specific recommendations of the Hatfield Report, (5) the absence of direct Commission jurisdiction, and the unsatisfied criteria for E9-1-1 treatment under any theory of ancillary jurisdiction, and (6) the Commission’s very limited authority over information services. Such restraint on the part of the Commission would ensure a greater likelihood that emergency-based telematics will be more widely deployed and advanced, thereby better serving the public interest and the Commission’s stated objective of rapid deployment of location-based emergency response services.

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INITIAL COMMENTS OF ATX TECHNOLOGIES, INC.

ATX Technologies, Inc. ("ATX") hereby submits these comments in response to the Federal Communications Commission's (the "Commission" or "FCC") *Further Notice of Proposed Rulemaking* in CC Docket No. 94-102 and IB Docket No. 99-67, FCC 02-326, released December 20, 2002 (the "*FNPRM*").²

I. INTRODUCTION

In its *FNPRM*, the Commission sought public comment on whether its E9-1-1 rules should be extended to telematics services. Perceiving telematics as being a possible reseller of CMRS service and capable of connecting end-users directly to 9-1-1 and the PSTN, the Commission asked, "What, if anything, should be required of telematics services?" The

² In re: *Revision of the Commission's Rules to Ensure Compatibility With Enhance 9-1-1 Emergency Calling Systems*, Further Notice of Proposed Rulemaking, CC Docket No. 94-102, at ¶ 57-80 (2002).

Commission then sought comments on customer expectations with regard to emergency services offered through telematics systems. Next, it requested comments on several technical issues related to the provision of emergency services through telematics and several general matters associated with ACN. Finally, the Commission sought comment on its legal authority to address TSPs and equipment manufacturers. In these comments, ATX provides the Commission with background information on the telematics industry and the specific telematics services ATX offers to its customers (automakers) and their subscribers (motorists), while also responding to the Commission's specific questions.

II. ATX AND THE TELEMATICS MARKET

A. Background: Who Is ATX and What Is Telematics?

ATX is a privately held corporation based in Irving, Texas, that sells location-based and other telematics services to automobile manufacturers (also referred to as original equipment manufacturers or "OEMs"). ATX's customers include Mercedes-Benz, BMW, and Jaguar.

The definition of *telematics* is often broadly applied. In the context of the services delivered by ATX, telematics entails the use of wireless telecommunications networks to transmit voice and data back and forth between the telematics response center and the telematics-equipped vehicle. This information transfer is used today primarily for the following purposes:

1. To open a voice and data channel between the telematics response center and the vehicle for assisting vehicle occupants with specific services (i.e., roadside assistance, real-time traffic information, travel directions, vehicle theft recovery, remote vehicle diagnostics, and safety-related services such as location-based emergency assistance and automatic crash notification. (Each OEM can pick and choose which services to offer to their customers);

2. to extract real-time data from the vehicle (i.e., engine diagnostics, air bag deployment, and vehicle location as determined by GPS satellite positioning);
3. to activate remotely in-vehicle functions (e.g., unlocking doors or starting engine-heater-air conditioner).

In brief, the driver presses a button that places a wireless call to the TSP to request assistance, or the signal is sent automatically in a crash event.

B. Overview of the Telematics Industry

The consumer telematics market emerged as an extension of the home security business model – providing private monitoring of cars for safety and security – and as an enhanced version of the roadside assistance (e.g., dispatching a tow truck for a flat tire or empty gas tank) that OEMs provide either directly or through a contracted third party. ATX and Ford launched the first consumer telematics program in early 1996, which provided only two services – location-based roadside assistance and location-based emergency assistance. Automatic crash notification was introduced in 1997. As visions for expanded Internet applications bloomed in the late 1990s, vendors of microprocessors and digital content saw telematics, and the increased computerization of vehicles, as a way of obtaining efficiencies and expanding services.

Telematics received some wildly optimistic market projections, ranging from 39.6 million to 46.4 million subscribers by 2007.³ More recent projections forecast more moderate growth (16.5 million by 2007).⁴

³ UBS Warburg, (Aug. 2000), (predicting 39.6 million subscribers); Dain Rauscher Wessels forecast, (Sept. 2000), (predicting 46.4 million subscribers).

⁴ Strategy Analytics (Dec. 2001).

The suite of telematics services provided by ATX to consumers has dramatically expanded beyond location-based roadside assistance and emergency assistance/ACN to include a number of vehicle-centric, location-based services such as stolen vehicle recovery, remote door unlocking, real-time traffic reports, directions/routing assistance, vehicle security system notification, and remote diagnostics. More recently, ATX began deploying telematics technology to assist both automotive OEMs and their affiliated dealerships to better manage their business costs, to provide more timely and efficient vehicle maintenance, and to realize benefits from a continuous communications link with their product and their customer. Call volume at the ATX Response Center reflects this trend. Out of the 1.1 million calls ATX received from vehicle owners in 2002, approximately 4,700 involved a reported in-vehicle emergency or notification of an impact.

The consumer telematics industry is now at a crossroads with business models in the market that could lead the industry in several directions. In the first model, telematics services are promoted to consumers primarily as “enhanced vehicle safety,” entailing an annual subscription fee for a suite of location-based services with safety/emergency assistance applications representing the core service. The second primarily tailors vehicle-centric services such as remote vehicle diagnostics and maintenance to the consumer, while simultaneously using real-time data from the vehicle to help OEMs and their affiliated dealerships reduce or avoid costs, increase customer retention, and generate revenue. A third model focuses on promoting enhanced driving convenience to consumers through navigational assistance and enabling hands-free communication with the driver’s wireless communications device. In both the second and third models, it is conceivable that these could be offered with little, if any, of the more costly location-based emergency assistance features, such as ACN. In fact, one OEM in the market

today offers a telematics platform without any location-based emergency assistance services. Consumers will access emergency responders solely through their location-enabled wireless handset.

It is hard to see how Commission requirements on emergency-related response services will encourage OEMs to deploy safety-based telematics. The prospect of being regulated by an agency could encourage the OEMs to move away from the enhanced safety platform and concentrate their business plans solely on non-safety applications. In fact, the ATX model for growth in telematics is not dependent on the delivery of emergency assistance, but on the delivery of vehicle-centric services that provide significant economic return for the OEM.

C. Defining ATX and its Emergency Services

ATX relies upon the continent's wireless backbone to receive consumer requests for assistance. When responding to emergency calls, ATX verifies it is an emergency and then identifies and contacts the correct local PSAP to provide emergency responders with an accurate location of the vehicle. ATX contacts the PSAP via a 10-digit phone number provided to ATX by the PSAP, the same protocol for emergency calls used by home security monitoring firms, personal alarm monitoring services, and commercial security alarms. (Most PSAPs provide a non-published number.) Similar to these fixed services, telematics provides subscribers with another connection for summoning assistance, one that is enhanced with potentially critical information to emergency responders (i.e. vehicle identification number, vehicle color, license plate number, direction of travel, and third-party emergency contacts.)

In its *FNPRM*, the Commission cited two specific emergency services that are provided by some of ATX's OEM customers: (1) Automatic Crash Notification "ACN"; and (2) Emergency Assistance (sometimes called "MayDay" Assistance).

1. Automatic Crash Notification (“ACN”)

As the name implies, Automatic Crash Notification (“ACN”) automatically contacts an ATX response center in the event of an auto crash. If the airbags, seatbelt pretensioners, or collision detection sensors deploy in the subscriber’s vehicle, the telematics hardware in the vehicle transmits a data signal (including the vehicle’s location⁵) and opens up a voice channel to an ATX response center able to handle calls throughout North America and in any of three different languages. No verbal or manual input from the subscriber is required to activate this service. The caller’s location is automatically plotted on a digital map on a Response Specialist’s workstation as the Response Specialist establishes voice communication with the vehicle. As the ATX response center receives this data, profile information is retrieved and displayed.⁶ The Response Specialist communicates with the vehicle occupants to determine the nature of the emergency. Meanwhile, a database, developed and continually updated by ATX, matches the vehicle’s location with the PSAP having jurisdiction over the area, and provides the telephone contact number that PSAP has asked ATX to use in emergencies. A second Response Specialist often is involved in providing verbal information to the PSAP. Should an emergency medical dispatcher need to speak directly to the occupants in the vehicle, the ATX Response Center can bridge or conference the call, allowing the dispatcher to talk directly with the occupants. **In 2002, ATX contacted PSAPs throughout the US and Canada with 2,300 automatic airbag (ACN) notifications.**

⁵ Today, the GPS capabilities in ATX clients’ cars far exceed the FCC E9-1-1 accuracy requirements for wireless location technologies, and do so everywhere in the country.

⁶ This information is submitted by the subscriber upon his or her application, renewal, or profile update.

2. Emergency or “MayDay” Assistance

In the event of an emergency (e.g., heart attack/seizure/stroke, assault, fire, carjacking, report of suspicious activity, or a vehicle being followed), a subscriber can request assistance by pushing a pre-defined button (what the Commission’s *FNPRM* calls a “hot button”) inside the vehicle. When activated, the caller’s exact location, along with other vital information, is transmitted to an ATX response center. Once the response center receives this data, the same scenario as described with ACN ensues. The Response Specialist will attempt to determine the specific nature of the emergency by speaking with the caller in the vehicle. In the majority of cases, the call to ATX is not a 9-1-1 emergency. In 2002 throughout North America, ATX forwarded roughly 2,400 or only about 40% of such MayDay calls to a PSAP.⁷ As is the case with ACN calls, the ATX Response Specialist will offer to remain on the line with the caller until help arrives, whether it is the police, an ambulance, or a tow truck, and will notify any person that the customer has asked be called in an emergency (as specified in the customer profile).⁸

With both ACN and MayDay calls, there is no direct connection from the vehicle to a local PSAP, primarily because few ACN and MayDay signals received by ATX require public emergency response, although most fall under a broad definition of the term “emergency”.⁹ At

⁷ Approximately 60% of the Mayday calls received by ATX do not require forwarding to public dispatch because they do not represent a public emergency (i.e., the vehicle isn’t operating properly, the driver is in panic because he/she is lost; the vehicle has struck an animal). This represents a fraction of a percent of the estimated 200 million (50 million from wireless devices) 9-1-1 calls received by PSAPs annually. *See NENA 9-1-1 Fast Facts.*

⁸ This service lifts a burden from emergency response agencies which often do not have the time or resources to contact families of a victim.

⁹ Flat tires, breakdowns, being lost, and the like, even needing a hotel room for the night, certainly qualify as “emergencies” for ATX staff to handle, but are most definitely not 9-1-1 calls.

ATX, if the driver perceives it as an emergency, it is, even if it is not under 9-1-1 standards. Indeed, many police departments no longer dispatch police officers to non-injury accidents (e.g., Dallas, Texas). Therefore, unlike many calls to 9-1-1 dispatchers from wireless phones, which are not real emergencies at all, calls forwarded from telematics centers are screened, reducing the call volume burden on PSAPs. This is particularly important given the very large number of wireless 9-1-1 calls that lack location information, but often are generated by a single highway incident. In addition, most PSAPs do not have the ability to read the location and vehicle data that accompany the call.

Finally, the telematics connection exists primarily to assist drivers, monitor the performance of their vehicle, and provide automakers and dealerships with real-time information about the performance of the vehicle and the satisfaction of their customers while using those products. Telematics is not offered as a substitute for a wireless 9-1-1 call. The ACN and MayDay functions merely leverage the telematics connection to provide drivers with an alternative path for summoning help and providing emergency responders with additional, useful information that is unavailable from a wireless handset or bystander reports.

3. ATX merely answers the driver's phone call

ATX's primary business is to use telematics to satisfy and augment business for its customers – automobile manufacturers (“OEMs”) and OEMs’ affiliated automotive dealerships – and to assist motorists whenever they are using the customers’ vehicles. ATX does not provide or resell mobile telecommunications services.

ATX service bears no resemblance to commercial mobile radio service. The voice and data interconnection with the vehicle and wireless network can occur either through an embedded unit and microphone (no handset), through an embedded unit and a dedicated, in-

vehicle handset, or through a handset connected via Bluetooth technology to an in-vehicle unit. Essentially, as designed today, ATX is simply answering a call from a driver, transmitted over the wireless network.

D. Customer Expectations Concerning ATX Provided Emergency Services

Customers do not expect ATX provided emergency assistance to connect them directly to the PSTN or 9-1-1 because it is promoted and purchased as a driver-assistance aid, not as a direct link to the PSTN or 9-1-1. ATX and its OEM customers specifically promote their emergency services as safety and security services that can assist drivers in many ways, one of which is by providing reliable emergency notification and location and vehicle/owner information to the appropriate emergency responders. Even the names of the OEM programs under which ATX services are marketed reflect this purpose: Mercedes-Benz “Tele-Aid”, BMW “Assist”, and Jaguar “Net.” Furthermore, the in-vehicle buttons that are dedicated to summon “emergency” assistance from TSPs are marked as “SOS,” or other similar terms, and not “9-1-1.”

The distinction from 9-1-1 is clear because – just like private firms monitoring home security – the customer has to decide periodically to purchase the service. It is highly unlikely that consumers would pay for the service if they expected to receive merely a duplicated or alternative path to 9-1-1. ATX and its OEM customers clearly communicate – through marketing literature, in the subscription agreement for service, and in all customer contacts, including an acquaintance call with an ATX operator to introduce the service – that the telematics subscriber is contacting their OEM, not a 9-1-1 call taker.

What consumers do expect in terms of emergency assistance when they subscribe to ATX-provided service is that their OEM (with ATX as proxy) can guide responders to their

vehicle in the event emergency dispatch is needed, that an OEM representative will stay on the line with them until help arrives, and that in the midst of confusion, the representative will notify the third parties the driver designated as its emergency contacts – a family member, a tow truck, or their place of employment. For consumers with telematics-equipped vehicles, telematics provides a range of services, including serving as a privacy buffer, that collectively becomes a broad driver assistance tool.

E. The Benefits of ATX Telematics Service – Not Just Another Path to the 9-1-1, but an Important Contribution to Emergency Response Agencies

Telematics services provide emergency responders with several advantages over wireless carrier access to 9-1-1. Automatic crash notification is not reliant on the driver's ability to find their wireless phone and immediately dial 9-1-1 or communicate in the aftermath of a vehicle impact. Both ACN and MayDay services do not require the vehicle occupants to take any action to give a precise location or description of their vehicle. ATX has other useful information about cars and their owners, e.g., stolen cars can be located and recovered, and reported to police in all relevant jurisdictions, as well as verify critical information (i.e., color, make, model, directional heading, license plate number and the location of the car).

ATX has the ability to conference PSAPs and emergency medical dispatchers into the vehicle so they can provide medical advice or medically evaluate the victims at the scene, while first responders are still enroute. ATX's service also enables it to access other databases to provide emergency responders with additional information that is not available in a PSAP, including the subscriber's emergency contact list to obtain additional personal medical information needed by medical personnel.

TSPs can provide location data and other information (i.e., in which lane of traffic a vehicle is located) more precise than that provided by most eyewitnesses and, sometimes the

drivers themselves (especially if they are confused or incapacitated after a crash). Location data is immediately available when ATX calls public safety. These capabilities are particularly critical in rural areas where most highway fatalities occur, often because of delayed notification or an ambiguous or unknown crash location.

TSPs also reduce the burden on PSAPs by screening out false emergencies. Again, such “non-9-1-1 emergencies” amount to roughly half of all emergency ACN and MayDay calls received by ATX. (The presence of ACN and Mayday calls allows PSAPs to quickly assess “Good Samaritan” calls that currently burden 9-1-1 call centers when an accident occurs in the presence of many onlookers and passersby.) TSPs also provide callback capability to PSAPs. In both life-threatening and non life-threatening circumstances, TSPs stay on the line with drivers until responders arrive or the driver requests an end to the call, allowing PSAPs to field other emergency calls, while continuously monitoring in the event the situation in the vehicle changes (i.e. driver loses or gains consciousness, passerby appears on the scene, second collision occurs, or medical situation deteriorates). Significantly, these and the other benefits that telematics confer on PSAPs are provided at no expense to PSAPS or others in the public safety and emergency response communities.

III. TELEMATICS IS BEING SUCCESSFULLY INTEGRATED INTO AN EVOLVING PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEM

A. The Current Network is Reasonably Trouble-Free

Based on the low volume of telematics emergency calls and the importance of PSAPs effectively implementing Phase II of E9-1-1, efforts between the emergency response communities and TSPs have concentrated on identifying major issues, and then developing processes and steps to address these issues. As a result, telematics-based emergency assistance is

being gradually integrated into the evolving, but still highly decentralized, emergency response service with no evidence of problems or issues requiring regulation or oversight.

B. TSPs and Emergency Organizations Are Already Pursuing Future Integration Solutions

TSPs, including ATX, and the emergency response communities are working together in a consensus-driven approach to integrate telematics into a modern, and upgraded nationwide emergency communications system. After witnessing the parallel development of location-based services and mandated E9-1-1, ATX decided early in its formation to work proactively with the emergency response community. In 2000, ATX and other key players in 9-1-1, law enforcement, emergency medicine, and telematics participated in the National MayDay Readiness Initiative, sponsored by the U.S. Department of Transportation and the ComCARE Alliance. This initiative addressed many of the issues the Commission has raised, and set priorities for the integration process, including training, data requirements, and systems integration.

ATX is involved in committees within NENA and APCO currently developing solutions on joint training and protocols, certification standards, and nationwide PSAP databases.¹⁰ ATX is working with NENA in the development of technical standards for communications between telematics and PSAPs during emergencies. Among these standards are those dealing with minimum data sets required by a vast majority of PSAPs; geographic call routing to the appropriate PSAP; potential methods of routing into the 9-1-1 network; provision of location (ALI) and callback (ANI) data with the voice call; and the future dissemination of advanced

¹⁰ Telematics providers created the first comprehensive PSAP directories in 1996. These databases allow TSPs to determine rapidly which PSAP has jurisdiction over the vehicle's location and how to make contact. They are continuously updated by dedicated ATX staff to ensure a high level of accuracy.

ACN data to medical responders without imposing additional burdens on PSAPs. ATX also has been working with a variety of organizations and representatives of emergency responders “downstream” from the PSAP (i.e., emergency medical technicians, state emergency medical services directors, emergency room and trauma physicians, and state highway/traffic managers) regarding vehicle or driver data they deemed critical in an emergency. Still to be addressed are the range of options to achieve these standards, a corresponding cost-benefit analysis of each option, and the impact of each on PSAP operations across the country. ATX questions the wisdom of circumventing by regulation these well-established processes – particularly before these processes have even identified viable options, much less evaluated them.¹¹

The experience of the wireless E9-1-1 implementation is instructive. The current wireless E9-1-1 rollout, while underway, remains extremely fragmented and disjointed at the PSAP level, in part, because the mandate PRECEDED the normalization of standards. One wireless carrier uses one protocol, while another carrier uses another. Both may be complying with the mandate, but the data received by the PASPs are different and, thus, confusing. This makes the training, and therefore PSAP acceptance, problematic. Public safety and telematics need to continue working cooperatively on the development of these standards and an acceptable end product prior to any mandate. APCO, in particular, appears to recognize this.¹²

The technical weaknesses of the current 9-1-1 legacy network, noted in the Hatfield Report, make it hard for PSAPs to accept the same data feeds, which are easily and flexibly provided to other parties with commercial grade, internet-protocol data systems. Given the

¹¹ See APCO News Release, “*APCO Telematics Resolution Takes Non-Regulatory Approach to Emerging Life-saving Devices*,” (Jan. 3, 2003) (“APCO News Release”).

¹² *Id.*

difficulties PSAPs have experienced in meeting their responsibilities related to Phase I and Phase II implementation, any additional upgrades to public safety hardware systems must be carefully evaluated before new requirements can even be considered. Moreover, given the strong language of the Hatfield Report about the inability of the current 9-1-1 network to accept telematics data, it would be extremely unwise to force the telematics industry to integrate “backwards” into that legacy network.¹³ Instead, the 9-1-1 network should be upgraded to meet modern information technology standards.

Initiatives launched by TSPs and PSAP organizations are complemented by U.S. Department of Transportation-funded and state-initiated pilot projects in Virginia, Texas, and Minnesota that are, collectively, evaluating several methods to provide data, including location and call back information, to all emergency response agencies, including PSAPs. These field trials are also assessing the best routes by which to transmit calls and data to PSAPs without imposing undue burdens or costs on the majority of either PSAPs or TSPs’ customers, as well as which methods are most reliable in real-world driver conditions and over extended periods of time. Increased awareness about these trials are certain to foster additional proposals for evaluation.

This cooperative approach allows PSAPs and other public safety entities to focus on the priority of E9-1-1 deployment and give TSPs the flexibility to accommodate the immediacy of market-driven factors such as the growth of the telematics market, and the extent to which location-enabled 9-1-1 wireless phones become substitutes for the current in-vehicle MayDay offerings. This approach also fosters a more careful, analytical and quantifiable process for

¹³ See *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 9-1-1 Services*, WT Docket No. 02-46, at ii (2000) (“Hatfield Report”).

evaluating the best solutions for future integration of telematics-based emergency assistance into public emergency response.

C. Both the Existing 9-1-1 Network and PSAPs are Overburdened

The current 9-1-1 infrastructure is antiquated and ill-suited to handle emerging services such as telematics-based emergency services. In his report to the Commission on the deployment of E9-1-1, former OET Chief Dale Hatfield found that the current 9-1-1 network suffers from serious limitations in terms of speed, scalability, and adaptability, particularly in its ability to handle data. He asserted that those limitations were constraining the ability of the current network to extend beyond E9-1-1 access to accommodate non-traditional devices, such as telematics.¹⁴ As a result, Hatfield implies that the Commission should avoid adding specialized or new requirements during the current stage of the E9-1-1 deployment process and instead should focus on hastening the roll-out of Phase II of the E9-1-1 initiative.¹⁵

Similar to the existing network infrastructure, PSAPs are unable to effectively incorporate the data handling capabilities of ATX or any TSP into their E9-1-1 roll-out efforts. Here again, Hatfield noted in his Report that PSAP resources are already stretched thin. Calling it “PSAP fatigue,” his report found many PSAPs are faced with technical, operational, regulatory and funding challenges that drain their ability to complete Phase II of E9-1-1 deployment.¹⁶ He warned that incrementally imposing or altering requirements on PSAPs (i.e., “requirement

¹⁴ *Id.*

¹⁵ *Id.* at 40.

¹⁶ *Id.* at 31.

creep”) exacerbates this state of PSAP weariness and further jeopardizes their already strained E9-1-1 deployment projects.¹⁷

According to Hatfield, “requirement creep” hurts PSAPs with the least economic and personnel resources the most, preventing them from adequately coping with additional requirements.¹⁸ This is particularly troubling because it is on these PSAPs, and the generally more diffused populations they serve, that E9-1-1 has the greatest impact. It is also important to note that rural areas – where telematics-based emergency assistance will have its most immediate impact on reducing highway fatalities and serious injuries -- will be the last to benefit from comprehensive location-based systems for wireless E9-1-1. The inequality of services between the rural and metropolitan could intensify as, according to Hatfield, more affluent and advanced early adopters (i.e. urban and suburban PSAPs) of special or “one-off” systems push for even more functionalities and capabilities, while fatigued PSAPs remain unable to adopt those systems.¹⁹ In fact, PSAPs that have not yet requested Phase I or Phase II might consider additional delays if they perceive that additional requirements, such as those pertaining to non-traditional services (e.g., telematics-based emergency assistance and home security), could impact modification of their customer premises equipment or computer assisted dispatch systems. In both rural and urban areas, however, telematics-based emergency assistance affords a means of obtaining location-based services today without requiring additional PSAP investment and without burdening PSAPs by requiring compliance with yet another regulatory scheme and deadline for a service that generates a de minimis number of calls.

¹⁷ *Id.* at 40.

¹⁸ *Id.*

¹⁹ *Id.*

APCO and NENA, the largest national organizations representing PSAPs, agreed with the findings of the Hatfield Report with respect to PSAP readiness.²⁰ In addition, APCO also issued its own resolution stating its support for the current cooperative approach to integrating telematics and 9-1-1 networks.²¹ The resolution also expressed APCO's opposition to using legislative or regulatory mandates to require ACN devices to directly connect to PSAPs. Like Mr. Hatfield's report, APCO's resolution indicates an awareness of the detrimental, and ultimately unnecessary, burden that additional federal requirements would place both on PSAPs and the telematics industry.

IV. THE POTENTIAL IMPACT OF COMMISSION REGULATION

A. Premature or Unnecessary Requirements Could Retard the Nascent Telematics Industry

Nascent products such as wireless data services and CMRS services have benefited from the Commission's regulatory approach of consistently relying upon competitive market forces rather than government mandates.²² Indeed, the mere discussion and/or proposal of new regulations from the Commission, an agency which has had little prior experience with the automobile industry, and the anticipated consequential cost of regulation is likely to discourage companies that have not yet deployed telematics-based emergency services from offering such services.

²⁰ See Comments of NENA, APCO and NASNA, *In re Report on Technical and Operational Issues Impacting The Provision of Wireless Enhanced 9-1-1 Services*, WT Docket No. 02-46, filed Nov. 15, 2000.

²¹ *APCO News Release*.

²² See generally Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fifth Report, FCC 00-289 (rel. Aug. 18, 2000) at 9-18 ("*Fifth CMRS Competition Report*")

B. Premature or Unnecessary Requirements Could Frustrate Existing Integration Efforts and Have Unseen Regulatory Implications

Imposing new requirements on telematics would override the current consensus-driven process for integrating telematics emergency assistance with new and upgraded emergency communications networks. Adopting new requirements at this time would necessitate that thousands of local PSAPs and TSPs make large capital expenditures to fit new software and hardware into a 9-1-1 network that the Commission's top expert says is incapable of handling the chore. It is doubtful that there is enough money to make the necessary investments twice.

TSPs, PSAPs, medical groups, and other broad coalitions have been discussing interconnection issues for over three years. A new regulatory scheme could, however, short-circuit these discussions, the currently ongoing Department of Transportation field operation trials, and similar commercial research and development activity.²³

Similarly, new requirements on TSPs could create regulatory disparities and discriminatory treatment if not imposed on other third-party emergency call centers that forward emergency calls to PSAPs and other emergency agencies (e.g., home security systems, business alarm systems, medical devices, and medical institutions). Building on Mr. Hatfield's analysis, if these other "emergency" calls were routed to 9-1-1, it would further complicate the E9-1-1 deployment process and delay the deployment of a new, modern emergency network.

²³ To date, these trials have not been deployed long enough to yield conclusive, written documentation as to the reliability, viability, or cost efficiency of any of the interconnection approaches.

V. THE COMMISSION SHOULD CONTINUE ITS CURRENT APPROACH OF PERMITTING THE PHASED, CONSENSUS-BASED IMPROVEMENTS IN INTERCONNECTING TELEMATICS AND EMERGENCY COMMUNICATIONS IN ORDER TO MAXIMIZE TELEMATICS' CONTRIBUTION TO SAFETY

The Commission should follow the advice of its expert, Mr. Hatfield, and refrain from imposing new requirements on PSAPs or the E9-1-1 roll-out. Otherwise, as Mr. Hatfield noted, this would only further delay PSAP compliance with Phase II of E9-1-1 deployment and its attendant public safety benefits. The Commission should also not discourage automobile companies and others from deploying telematics by proposing regulatory regimes that add more uncertainty to telematics' future.

Instead, the Commission should defer to the very important cooperative efforts of TSPs, PSAPs, and the emergency response communities.²⁴ For example, APCO's resolution, adopted January 3, 2003, clearly recognizes the value of the telematics industry and concludes that there must be a close working relationship between the public safety community and telematics. Indeed, Commission regulatory mandates in this area are most likely to inhibit the growth of the one industry that has achieved ubiquitous, emergency response coverage and automatic emergency caller location without government regulation and at no cost to the PSAP community.

VI. LEGAL AUTHORITY OF THE COMMISSION OVER TELEMATICS

In its *FNPRM*, the Commission requested comment on whether its regulatory authority extends to TSPs. As discussed below, the Commission does not have direct jurisdiction over ATX or other TSPs that do not provide their subscribers with interconnected access to the public switched telephone network (PSTN). Nowhere has Congress granted the Commission subject

²⁴ See *APCO News Release*. The resolution states APCO's position that clearly recognizes the value of the telematics industry and concludes that there must be a close working relationship between the public safety community and telematics.

matter jurisdiction to regulate TSPs directly. Indeed, if the Commission does have any kind of jurisdiction over TSPs, it would be only on a limited ancillary basis. If the Commission should assert that it possesses ancillary jurisdiction over telematics, ATX submits that the public interest would be best served if the Commission treated telematics like other “information services” and refrained from directly regulating the service.

A. Direct Jurisdiction

Nowhere in the Communications Act of 1934, as amended, (hereinafter “the Act”), or any other statute, has Congress expressly granted the Commission the authority to directly regulate telematics services that do not connect end-users to the PSTN. The Commission’s assertion that telematics qualifies as a “commercial mobile service” under Section 332 of the Act, and therefore may be subject to the common carrier requirements of Section 201(b) of the Act, is based on a broad misunderstanding about telematics services. In addition, it relies on a strained interpretation of the relevant statutory language, rules, and legislative history. Likewise, the Wireless Communications and Public Safety Act of 1999 (hereinafter “the E9-1-1 Act”) also fails to provide a grant of the statutory authority necessary for the Commission to subject telematics services to the requirements of its E9-1-1 rules.

1. Application of Section 201(b) by Operation of Section 332

The Commission’s authority under Section 201(b)²⁵ of the Act extends to commercial mobile services by operation of Section 332 of the Act.²⁶ “Commercial mobile service” is defined as “any mobile service (as defined in section 3) that is provided for profit and makes

²⁵ 47 U.S.C. § 201(b) (providing the Commission “may prescribe such rules and regulations as it deems necessary in carrying out the provisions of the [Telecommunications Act].”)

²⁶ 47 U.S.C. § 332 (stating that providers of commercial mobile services are to be treated as common carriers for the purposes of section 201).

interconnected service available (A) to the public or (B) to such class of eligible users as to be effectively available to a substantial portion of the public.”²⁷ The Commission’s tentative conclusion that telematics services satisfies this definition is based on its apparent classification of all TSPs as providing cellular services to their customers. As a result, this misconception alters the applicability of two critical elements of the “commercial mobile service” definition to ATX’s telematics service.

a. “Mobile Service”

Section 332 of the Act required the Commission to enhance the definition of the “mobile service” element of the “commercial mobile service” definition by designating specific radio services as mobile services. Complying with the statutory requirement, the Commission issued its *Mobile Services Report and Order*.²⁸ The *Mobile Services Report and Order* determined that, among other services, unlicensed services meeting the definition of “commercial mobile radio service,” such as the resale of commercial mobile radio service, qualify as a “mobile service.”²⁹ The Commission found the inclusion of resale in the definition appropriate “since resale . . . can only exist if there is an underlying licensed service.”³⁰ In addition, the Commission noted that neither the statute nor the legislative history indicate that resellers are not “mobile service” providers or exempt from Section 332 regulatory classification.³¹ Failing to differentiate ATX

²⁷ 47 U.S.C. § 332(d)(1).

²⁸ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 74 RR 2d 835 (1994) (*Mobile Service Report and Order*).

²⁹ See *id.* at 844-846.

³⁰ *Id.* at 846, ¶37.

³¹ *Id.*

from other telematics services that also provide their subscribers with cellular services, the Commission appears to have determined that all telematics services satisfy this classification as eligible resellers.

Notwithstanding the effect of the Commission's tentative classification of all telematics providers as cellular resellers, the language of the combined definition (the statute and the Commission's designations) does not definitively characterize telematics as a "mobile service." The combined definition's emphasis on licensed services indicates that it is limited to those entities coordinating the actual physical transmission of signals, or those entities which mimic such conduct, and not licensees' subscribers that essentially provide an information service by utilizing, but not administering, the transmission capability to receive, process and diffuse information.³²

b. "Interconnected Service"

Assuming, *arguendo*, that ATX telematics is a "mobile service," ATX still does not meet the statutory definition of a "commercial mobile service" because it does not provide "interconnected service" to its end-users. The Commission, as directed by Section 332 of the Act, has defined "interconnected service" in Section 20.3(b) of its Rules to include "any mobile service which is interconnected to the public switched network . . . that gives subscribers the ability to transmit and receive messages to and from the public switched network."³³ Section 20.3 of the Commission's rules includes within the scope of interconnected service that which

³² See *Mobile Services Report and Order* at 846, ¶37 (excluding unlicensed Part 15 devices and unlicensed PCS services and noting that the original statutory definition of "mobile services" included services for which a license is required in a personal communications service . . .).

³³ 47 C.F.R. § 20.3(b) (defining "interconnected service"); see also *Mobile Services Report and Order* at 851, ¶55.

“gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.” The inability of ATX end-users to transmit messages directly to, or receive messages from, the PSTN would appear to make the definition inapplicable to ATX’s telematics service.

The definition of “interconnected service” also includes, however, services that are indirectly interconnected to the PSTN through an interconnected CMRS provider, such as a cellular carrier.³⁴ Coupled with an incorrect characterization of all telematics services as providing subscribers with access to the PSTN, this additional language arguably appears to support the interpretation of “interconnected service” as encompassing all telematics.

While the realities of ATX’s service offerings should be sufficient to remove ATX services from the above misinterpretation of “interconnected service,” the Commission’s own interpretation of the legislative history also illustrates that the definition was not intended to apply to services where subscribers do not directly access the PSTN. In the *Mobile Services Report and Order*, the Commission interpreted the legislative history of the statutory definition to find Congress intended an “interconnected service” to allow “subscribers to send or receive messages to or from anywhere on the public switched networks.”³⁵ According to the Commission’s *NPRM* in that proceeding, this broad interpretation of interconnection likely reflects a congressional desire to exclude from the definition “private line” type services that interconnect with and use facilities of the PSTN, but only allow a subscriber to send or receive

³⁴ See *Mobile Services Report and Order* at ¶¶57-60.

³⁵ *Id.* at 851, ¶55.

messages between limited points in the network.³⁶ Under even this broad interpretation, ATX's limited interconnection between the end-user and the ATX center would clearly not qualify as an "interconnected service."

2. Jurisdiction Under the "E9-1-1 Act"

The E9-1-1 Act provides even less of a basis than the Act for establishing Commission authority to impose the E9-1-1 regulations on the telematics services. The E9-1-1 Act does not provide the Commission with authority to impose E9-1-1 obligations in addition to those the Commission holds pursuant to other provisions of Title II of the Communications Act. Nowhere does the E9-1-1 Act reference a grant of authority over ACN or any other non-telecommunications feature of telematics. Indeed, the E9-1-1 Act actually limits the Commission's authority by including a savings clause expressly stating that "[n]othing in [the E9-1-1 Act] shall be construed to authorize or require the Commission to impose obligations or costs on any person."³⁷

B. *Ancillary Jurisdiction*

In addition to lacking direct statutory authority, any Commission claim of ancillary jurisdiction is so tenuous that it would not support the imposition of the E9-1-1 requirements on telematics service providers such as ATX. Under the standard set out by the Supreme Court in *Southwestern Cable*, the Commission may assert jurisdiction where it lacks explicit regulatory authority only where such jurisdiction is reasonably ancillary to its effective performance of an

³⁶ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Notice of Proposed Rulemaking*, 74 RR 2d 901, ¶14-16 (1993).

³⁷ Wireless Communications and Public Safety Act of 1999 (P.L. 106-81). Section (3)(b).

express statutory obligation.³⁸ The Commission's assertion of jurisdiction, vis-à-vis the application of the E9-1-1 rules to telematics services, is not "reasonably ancillary" to any direct statutory obligation. Alternatively, if the Commission should determine that it does possess the requisite ancillary jurisdiction to regulate telematics services, ATX submits that the Commission should ultimately refrain from directly regulating the service, as it has done with similar "information services."

1. The Commission Lacks Ancillary Jurisdiction

Under the applicable standard, the Commission may only assert ancillary jurisdiction (1) where it has existing statutory authority over the given area of communications, and (2) the assertion is "reasonably required to perform an express statutory obligation."³⁹ Several provisions of the Act arguably provide the Commission with the necessary existing statutory authority on which to base its ancillary jurisdiction. Sections 1 and 4 of the Act give the Commission broad authority to enact the necessary regulations to regulate interstate and foreign communications.⁴⁰ In addition, Section 2 of the Act specifically gives the Commission jurisdiction over "all interstate and foreign communication by wire or radio" and "all persons

³⁸ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).

³⁹ Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417 (citing *Southwestern Cable* generally) (citing Amendment of Section 64.702 of the Commission's Rules and Regulations, *Final Decision*, 77 FCC 2d 384, 432, ¶126 (1980) (*Computer II Final Decision*)). See also *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979) (stating that the Commission's ancillary authority is not "unrestrained" and may only be exercised provided such action is "necessary to ensure the achievement of the Commission's statutory responsibilities") (*Midwest Video II*).

⁴⁰ 47 U.S.C. § 151 (2001) (charging the Commission with "execut[ing] and enforc[ing] the provisions of this Act"); 47 U.S.C. § 154 (2001) (stating that, "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its functions").

engaged within the United States in such communication.”⁴¹ Telematics services and TSPs appear to fall under these very broad categories of communications and communicators, respectively.

Application of the E9-1-1 rules to telematics services, however, fails the second prong of the above standard. Specifically, the proposed regulation of telematics services would extend beyond any statutory obligation the Act may require of the Commission. In *Midwest Video II*, the Supreme Court clarified the term “reasonably ancillary,” as used in *Southwestern Cable*, by stating that the Commission's regulation in that case was “consistent with the Act because it had been found *necessary* to ensure the achievement of the Commission's statutory responsibilities,” and “the regulation was imperative to prevent interference with the Commission's work in [that area of regulation (broadcasting)].”⁴² ATX submits that application of the E9-1-1 rules to telematics services is neither “necessary,” nor “imperative” for the Commission to perform its statutory obligation to promote public safety.

The Commission promulgated its E9-1-1 rules pursuant to its statutory authority under Section 303(r) and the requirement that the Commission “make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of th[e] Act.”⁴³ The rules were intended to carry out Section 1 of the Act

⁴¹ 47 U.S.C. § 152 (2001). Section 3 of the Act defines “communication by wire” and “communication by radio” as including “the transmission ...of writing, signs, signals, pictures and sounds of all kinds ... including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.” 47 U.S.C. § 153 (2001). Telematics services, and the related equipment used to provide those services, appear to be at least “incidental” to the transmission of communications.

⁴² *Midwest Video II* at 706.

⁴³ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 9-1-1 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, (1996)

and Congress' charge of the Commission with, among other things, "promoting safety of life and property through the use of wire and radio communication. . . ."44

As ATX pointed out above, telematics service is already successfully protecting the safety of life and property. Indeed, in some cases telematics is performing that function more effectively than the existing E9-1-1 network. For example, because it does not require PSAPs to be ready to use location data, telematics can protect life and property anywhere in the United States, not just in those very few areas where PSAPs and their associated LECs are able to receive E9-1-1 data. Moreover, the telematics industry is deeply involved in a cooperative effort to provide emergency information to emergency response agencies. Finally, telematics services serve as an important adjunct to E9-1-1 services and supplement, rather than interfere with E9-1-1's mission of enhancing public safety. Thus, application of the E9-1-1 rules is neither "necessary," nor "imperative" to achieve the statutory obligations of protecting life and property because that process is already in place and yielding successes.

2. The Commission Should Treat Telematics Services Like Similar "Information Services" and Refrain From Regulating the Service

ATX asserts that any Commission claim of ancillary jurisdiction over telematics services is tenuous, at best. However, if the Commission should find such jurisdiction exists, ATX urges the Commission to treat telematics services like similar "information services" and refrain from directly regulating the service. The Commission has asserted ancillary jurisdiction over several other "information services" in the past,⁴⁵ including a service quite analogous to telematics –

⁴⁴ See Revision of the Commission's rules to ensure compatibility with enhanced 9-1-1 emergency calling systems, *Notice of Proposed Rulemaking*, 9 FCC Rcd 6170, (1994) (citing 47 U.S.C. § 151).

⁴⁵ Most recently, the Commission has asserted its ancillary jurisdiction over: (1) customer premises antennas used for fixed wireless signals; (2) information services in general, regardless

alarm monitoring systems (“AMS”) (e.g., home security systems). ATX submits that the Commission’s treatment of AMS as an “information service” subject to its ancillary jurisdiction under Title I of the Act provides a fitting template with which the Commission may proceed in developing its treatment of telematics services, if it finds the requisite jurisdiction exists.

a. Alarm Monitoring Systems (AMS)

In many respects, telematics is the mobile version of AMS. Both services utilize carrier transmission capabilities to transmit messages from end-users to a service center. Both services also focus on the shaping and routing of information and neither is involved in the underlying transmission capability used to transmit the information. As a result, AMS provides a sound example of how the Commission could proceed in treating telematics services.

Until Congress enacted Section 275 of the Telecommunications Act, giving the Commission express Title II authority to restrict the ability of Bell operating companies (“BOCs”) to enter the AMS market, the Commission was forced to utilize its ancillary jurisdiction to impose restrictions on BOC entry into the AMS market and eligibility and use requirements for AMS use of reserved spectrum. Based upon ancillary jurisdiction, these regulations could only extend to areas of communications where the Act granted the

of whether provided by carriers or non-carriers; (3) “voicemail and interactive menu services, and related equipment,” in order to subject them to disability access rules; and (4) enhanced services to impose structural separation on AT&T provision of enhanced services. *See Competitive Networks*, 15 FCC Rcd at 23029 ¶102, 23042 ¶134 & n. 318 (customer premises antennas); Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417, 6457 ¶ 98 (1999) (information services generally and voicemail); *Computer II Final Decision*, 77 FCC 2d at 432, 461-86 (enhanced services).

Commission an express statutory obligation.⁴⁶ As a result, these regulations only indirectly burdened AMS by focusing on the underlying transmission capabilities with which AMS was provided, whether it is by wire or wireless facilities. In neither instance did the Commission utilize ancillary jurisdiction to mandate, as it suggests it might do with telematics services, how AMS information should be processed, configured, or transmitted. Also, unlike the Commission's telematics proposal, the Commission did not dictate who should receive pertinent AMS information, or how it should be routed. The Commission did not impose restrictions or obligations on the information component of the AMS communications. By classifying AMS as an "information service," the Commission kept it within the purview of Title I and avoided directly regulating the equipment or service components of the industry.⁴⁷

Like AMS, telematics is essentially an "information service." As noted, telematics, like AMS, shapes and routes information for end-users, but does not manage or control the underlying transmission capabilities. Telematics is an information service because it "offers a capability for generating, acquiring, . . . processing, retrieving, and utilizing" the location information determined by the integrated, on-board GPS receiver, which constitutes a key

⁴⁶ In the case of BOC entry into AMS, the requirements in Sections 202 and 202 of the Act that the Commission ensure just and reasonable common carriage rates provided the necessary statutory obligation. The grant of authority to efficiently manage the electromagnetic spectrum in Section 303 of the Act provided the necessary statutory basis for the Commission to exercise ancillary jurisdiction and impose eligibility and use requirements on reserved spectrum.

⁴⁷ See Amendment of Section 64.702 of the Commission's Rules and Regulations, *Final Decision*, 77 FCC 2d 384, 431-35, 450-52, fn 38-40, 53-55 (1980) (*Computer II Final Decision*). (finding that customer premises equipment (CPE) and enhanced services, including AMS, were not within the scope of its Title II authority, but were within ancillary jurisdiction of Title I); See also *Applied Spectrum Technologies, Inc.; Petition for Declaratory Ruling, Memorandum and Opinion Order*, 58 RR 2d 881 (1985) (finding that petitioners alarm monitoring service constituted an "enhanced service," subject to Title I treatment under the *Computer II* rules).

component of the service.⁴⁸ The fact that “unprocessed voice communications” are “an inseparable part of the service” does not exclude telematics from being an information service.⁴⁹ As a result, if the Commission asserts that it has ancillary jurisdiction over telematics, the Commission will implicitly recognize that the service is an “information service.” If it were to classify telematics as an “information service,” the Commission should do what it has done with other “information services,” such as AMS and even ISPs to a certain extent, and simply refrain from directly regulating the service. Such regulatory restraint also would be consistent with the Commission policy of not prematurely regulating nascent industries in order to allow those industries to continue to grow unencumbered by inapt regulations. Most importantly, however, such an approach would result in expanded public interest benefits not unlike those produced by the alarm monitoring and broadband industries.

VII. FINAL COMMENT

For the reasons stated above, imposition of the Commission’s E9-1-1 rules, or other rules, on telematics would be clearly inconsistent with established Commission policy and the general consensus approach established within the telematics industry and the emergency response communities. Serious discussion, much less adoption, of such proposals will likely harm the public by chilling the development and deployment of life-saving telematics services. For these reasons, ATX strongly urges the Commission to reject such an unsuitable regulatory

⁴⁸ 47 U.S.C. Sec. 153(20).

⁴⁹ See *In re Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, *Report to Congress*, paras. 56-60 (April 1998) (available at http://ftp.fcc.gov/Bureaus/Common_Carrier/Reports/fcc98067.pdf).

approach and allow telematics to continue its development as a promising complement to the existing emergency response system in our country.

As Commissioner, now Chairman, Michael Powell said about another dynamic market that was even more mature than telematics is today:

[G]iven the dynamic record of the Internet market dynamics, I start with a rule of decision – a burden of proof, if you will. I am of the view that anyone advocating the extension or intrusion of regulation into such a vibrant market bears a heavy burden of proving that the “public” will be harmed, absent doing so. Proffered arguments should be eyed skeptically and critically. We must have enough courage to test and cross-examine rhetorical appeals⁵⁰

Respectfully submitted,

ATX Technologies, Inc.

By: /s/ Gary Wallace
Gary Wallace
Vice President, External Affairs
ATX Technologies, Inc.
8550 Freeport Parkway
Irving, Texas 75063-2547

(972) 753-6200
Fax: (972) 753-6300

Of Counsel:

Wiley Rein & Fielding L.L.P.
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

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⁵⁰ Remarks by Michael K. Powell, Commissioner, Federal Communications Commission, Before the Federal Communications Bar Association (Chicago Chapter), Chicago, Illinois (Jun. 15, 1999).